

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CLEVELAND, OHIO

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IN RE: : Case No. 1:17-md-2804
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OPIATE LITIGATION :
: **VOLUME 6**
TRACK THREE CASES :
: *(Pages 1308 - 1342)*
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1:18-op-45032 :
1:18-op-45079 :
: Wednesday, May 18, 2022
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TRANSCRIPT OF PHASE II ABATEMENT BENCH TRIAL PROCEEDINGS
HELD BEFORE THE HONORABLE DAN AARON POLSTER
SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Gregory S. Mizanin, RDR, CRR
United States District Court
Northern District of Ohio
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Proceedings recorded by mechanical stenography.
Transcript produced with computer-aided transcription.

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1 WEDNESDAY, MAY 18, 2022

2 - - -

3 (Proceedings commenced at 9:04 a.m.)

4 - - -

5 THE COURT: Good morning. How are you all
6 doing?

7 Okay. I guess we need to take care of any exhibits
8 from yesterday. I guess we should start with the defendants
9 because they were your witnesses.

10 MS. FUMERTON: Your Honor, Tara Fumerton.

11 For Dr. Kessler, we showed these to plaintiffs
12 already, and I believe they don't have any objection, but
13 they can obviously say if they do.

14 The first, the WMT-MDL-01612. That's Dr. Kessler's
15 CV.

16 THE COURT: Any objection?

17 MR. WEINBERGER: No objection.

18 THE COURT: Okay.

19 MS. FUMERTON: The next one is WMT-Demo-002,
20 and that's the slide deck that has the summary of his
21 opinions and charts.

22 THE COURT: Any objection to those?

23 MR. WEINBERGER: No objection.

24 THE COURT: Thank you.

25 MS. FUMERTON: The next one is WMT-MDL-01614,

1 and that's the Larney figure 7.21 and the eAppendix that
2 Dr. Kessler created.

3 MR. WEINBERGER: No objection.

4 THE COURT: Okay. That's in.

5 MS. FUMERTON: And the last one is
6 WMT-MDL-01612, which is Dr. Kessler's expert report, but
7 we're just seeking to admit Appendix E, which is at pages 59
8 through 66.

9 MR. WEINBERGER: Those are the regression --

10 MS. FUMERTON: The regression.

11 MR. WEINBERGER: -- calculations?

12 No objection.

13 THE COURT: Ms. Fumerton, what was the full
14 number for the slide deck?

15 MS. FUMERTON: It was Demo 002.

16 THE COURT: All right. Thank you.

17 Are plaintiffs seeking to admit anything with respect
18 to exhibits?

19 MR. WEINBERGER: P4900. Your Honor, that's
20 the Trumbull County Mental Health and Recovery Board -- I
21 think it's a three- or four-page document. It charts, among
22 other things, the OUD patients.

23 THE COURT: Any objection to that?

24 MS. FUMERTON: No objection.

25 THE COURT: Thank you.

1 MR. WEINBERGER: P4902 and 4904, which are the
2 two Purdue checks written to Dr. Kessler.

3 MS. FUMERTON: So can we see a copy of that,
4 because I don't think -- that's not what ours are showing
5 for the numbers.

6 THE COURT: Let's make sure we get the numbers
7 right. The checks should come in, but if they're different
8 numbers, we need to clarify that.

9 MS. FUMERTON: Yeah, because I have P4902 as
10 something different.

11 MR. WEINBERGER: We'll figure it out.

12 MS. FUMERTON: And, Your Honor, the only other
13 thing is I think we might be objecting to those, depending
14 on which documents they are, because one of those are not
15 actually a check as described and not something that Dr.
16 Kessler had recognized, but I need to see the documents
17 before I can assert my objections.

18 MR. WEINBERGER: It's -- one's a check
19 request, and one is a check, but we'll show you the
20 documents.

21 THE COURT: The point is he acknowledged the
22 money came. So that's all. So they --

23 MS. FUMERTON: Well, yes, Your Honor. It's so
24 hard to do this in the abstract because I'm sort of arguing
25 against documents I'm not seeing right now, but we would

1 object based on the fact that I don't think that the request
2 was something that he was copied on and, in fact, was not
3 something that he recalled as to -- and was different --

4 THE COURT: Well, overruled. He acknowledged
5 getting money from Purdue in 2016 and 2017, so this is the
6 evidence of it, so it will come in over objection, but I
7 want to have the right number.

8 MS. FUMERTON: Well -- okay. Your Honor, can
9 we just reserve a final ruling on that until we --

10 THE COURT: Well, I'm ruling that they're in.
11 I saw the checks. I mean, I'll go back and see what my
12 notes say, and I hope I wrote down the number.

13 Can someone find these so we can see what they are?

14 MS. FITZPATRICK: Yes, Your Honor.

15 According to my notes --

16 Laura Fitzpatrick.

17 I'm looking --

18 THE COURT: I have 4904, which was another
19 13,600 in May of 2017, so those --

20 MS. FITZPATRICK: And P4902, Your Honor, is
21 the \$40,000 check request to Dr. Kessler. That's P4902.
22 But we're printing out copies now for defendants so they can
23 confirm.

24 THE COURT: 4902 is the \$40,000 --

25 MS. FUMERTON: Your Honor, if you have a copy

1 of that -- thank you.

2 I don't believe that that's the -- not a check -- Your
3 Honor, that's the one that he did not recall seeing. And,
4 in fact, that's different than the amount that he ultimately
5 testified that he recalled receiving from them. That's why
6 we have a little bit of --

7 THE COURT: Well, my notes say he recalled
8 getting \$40,000 and then he got some more the next year.

9 MS. FUMERTON: Your Honor, that's actually not
10 what he testified to. He testified that he received --

11 (Court Reporter interjection.)

12 MS. FUMERTON: He testified that he thought he
13 received about 30,000 from them, and Mr. Lanier showed them
14 this document, which is an internal Purdue document. He's
15 not on it. And he said, well, that's not -- you know, if
16 you say it's 40, I suppose.

17 But this is not a check. That is actually --

18 THE COURT: Let's put in the contract, all
19 right? Let's put the contract in, which he acknowledged.

20 MS. FUMERTON: So I don't believe there is a
21 contract.

22 THE COURT: Yes, there is. I saw it and it
23 was --

24 MR. WEINBERGER: Contract is 4901.

25 THE COURT: Let's put in 4901 and forget the

1 checks because that has an amount that was a certain amount
2 of hours. I think \$800 an hour, up to \$40,000. Let's put
3 in the contract.

4 MS. FUMERTON: Your Honor, also this is
5 unsigned.

6 THE COURT: It went in. He said this was his
7 contract. So forget the checks. We'll put in the contract.

8 MS. FUMERTON: So 4901 then is the only one
9 that will go in?

10 THE COURT: Let's put in 4901. We got his
11 testimony and we got the contract --

12 MS. FUMERTON: Okay. Thank you, Your Honor.

13 MR. WEINBERGER: Your Honor, for the record,
14 we -- the plaintiffs are in agreement with that
15 modification.

16 THE COURT: Thank you.

17 MR. WEINBERGER: And then the final one, Your
18 Honor, is 4905, which is the Kessler regression model
19 calculations, which is a repeat of one of the documents that
20 Walmart has; however, it contains the red circles that were
21 made with the witness that reflects those parts of the
22 calculation that were not significant.

23 So when Mr. Lanier was cross-examining the witness, we
24 made a separate exhibit that showed those elements of the
25 calculation that were not significant, not statistically

1 significant.

2 THE COURT: Any objection to that?

3 MS. FUMERTON: No, Your Honor.

4 THE COURT: 4905 may come in.

5 Okay. That takes care of everything from both sides
6 on Dr. Kessler.

7 All right. Then we have Dr. Chandra. We'll start
8 with the defendants, what they would like to admit.

9 MS. MILLER: Good morning, Your Honor.

10 The first thing that we would like to admit is
11 CVS-MDL-5015, that's Dr. Chandra's CV.

12 THE COURT: Okay. Any objection to that?

13 MR. WEINBERGER: No objection.

14 THE COURT: That's in.

15 MS. MILLER: CVS-MDL-5012, that's Exhibit 2 to
16 Dr. Chandra's report.

17 MR. WEINBERGER: No objection.

18 THE COURT: Okay. That's in.

19 MS. MILLER: DEF-MDL-11897, that's the Lake
20 County complaint that Dr. Chandra testified about.

21 THE COURT: Any objection to that?

22 MR. WEINBERGER: Well, the -- first of all, it
23 is a complaint that was originally filed but did not include
24 these defendants. Generally a complaint is not admissible
25 in evidence. I realize he said he took it into account. So

1 we're objecting to the --

2 MR. DELINSKY: Your Honor, the basis for
3 admissions is the party admission rule, and a complaint and
4 answer are perhaps the most fertile ground for party
5 admissions. That's the design of them. So they're -- I'm
6 sorry. So they're independently admissible, and he
7 testified he relied on them. The purpose of his reliance to
8 which he testified was that --

9 I'm almost done, Pete.

10 It was that he -- there are statements in here about
11 the culpability of manufacturers on which he relied in
12 identifying the different sectors.

13 THE COURT: I'll admit it. Everyone knows
14 that plaintiffs sued a number of other entities in
15 their Lake and Trumbull County complaints besides these
16 pharmacies, so it's a matter of public record anyway.

17 MR. WEINBERGER: Your Honor, just for the
18 record, a party -- a plaintiff cannot admit to the
19 culpability of another independent --

20 THE COURT: It doesn't matter. It's evidence
21 that the plaintiffs made allegations against other entities.
22 For whatever that's worth, that's a fact that plaintiffs did
23 make allegations against other entities. Some entities have
24 settled. Some I've severed and are pending. Three are
25 here, so -- well, three -- the three defendants are here,

1 but there were a number of others named, so it's evidence of
2 that. And Dr. Chandra said he took that into account. So
3 the complaint speaks for itself anyway.

4 Any other exhibits?

5 MS. MILLER: Yes, Your Honor.

6 DEF-MDL-11899, that's the Trumbull County complaint.

7 THE COURT: Well, the ruling's the same, and
8 the defendant -- plaintiffs have their same objection.

9 MS. MILLER: Next exhibit is CVS-MDL-5013,
10 which is Exhibit 3A to Dr. Chandra's report.

11 MR. WEINBERGER: No objection.

12 THE COURT: Okay. That can come in.

13 MS. MILLER: CVS-MDL-5014, which is Exhibit 3B
14 to Dr. Chandra's report.

15 MR. WEINBERGER: No objection.

16 THE COURT: Thank you.

17 MS. MILLER: And then moving to the
18 demonstratives.

19 CVS Demo 015, the slide entitled Allocation
20 Methodology.

21 MR. WEINBERGER: No objection.

22 THE COURT: Thank you.

23 MS. MILLER: CVS Demo 016, the slide entitled
24 Scenario 1.

25 MR. WEINBERGER: No objection.

1 THE COURT: Thank you.

2 MS. MILLER: CVS Demo 018, slide entitled
3 Scenario 2.

4 MR. WEINBERGER: No objection.

5 THE COURT: Thank you.

6 MS. MILLER: CVS Demo 019, slide entitled
7 Scenario 3.

8 MR. WEINBERGER: No objection.

9 THE COURT: Thank you.

10 MS. MILLER: And then, finally, we'd like to
11 mark Dr. Chandra's expert report for identification, which
12 is CVS-MDL-05008.

13 THE COURT: Okay. That expert report is
14 marked for identification?

15 MS. MILLER: Yes, Your Honor.

16 MR. WEINBERGER: No objection to it being
17 marked for identification.

18 THE COURT: All right. And then for the
19 plaintiffs.

20 MR. WEINBERGER: We have no Chandra exhibits,
21 related exhibits.

22 THE COURT: I can't remember -- now the one
23 exhibit you we talked about and we were going to work on a
24 stipulation, did we have that in?

25 MR. WEINBERGER: That's 4900, Your Honor.

1 Yes.

2 THE COURT: That's in, yes.

3 MS. MILLER: And, Your Honor, we have some
4 additional documents that we've already shown and shared
5 with the plaintiffs, and they have no objection to them
6 coming in.

7 THE COURT: All right. Let's put those in.

8 MR. WEINBERGER: To be clear, these are
9 documents that were not used with a witness, right? But --

10 MS. MILLER: Yes, Pete.

11 MR. WEINBERGER: -- we have agreed to allow
12 for their admission into evidence.

13 MS. MILLER: Thank you very much.

14 DEF-MDL-14530, that's the Rite Aid settlement with
15 Lake and Trumbull Counties.

16 DEF-MDL-15070, that's the Giant Eagle settlement with
17 plaintiffs.

18 DEF-MDL-15069, plaintiffs' interrogatory responses.

19 DEF-MDL-14325, that's the Lake County Provider Agency
20 Quality Improvement Utilization Review for Lake-Geauga
21 Recovery Centers.

22 DEF-MDL-14329, a letter from Melanie Blasko to
23 Kimberly Fraser attaching funding proposal documents from
24 Lake-Geauga Recovery Centers.

25 DEF-MDL-14385, a letter from Jonathan Lee to Kimberly

1 Fraser attaching funding proposal documents from Signature
2 Health.

3 DEF-MDL-14396, letter from Shelly Zimmerman to Lake
4 County ADAMHS Board members attaching funding proposal
5 documents from Windsor Laurelwood.

6 DEF-MDL-14405, Lake County Provider Agency Improvement
7 and Utilization Review for Signature Health.

8 DEF-MDL-14407, Lake County Provider Agency Improvement
9 and Utilization Review for Windsor Laurelwood Center.

10 DEF-MDL-14713, ADAMHS Board quarterly report.

11 DEF-MDL-14765, an e-mail from Lauren Thorpe to April
12 Caraway related to updated opioid action plan.

13 DEF-MDL-14817, an e-mail from A. Clark to C. Walter
14 regarding SOR 2.0, Year 2 guidance.

15 That's all we have, Your Honor.

16 THE COURT: Okay. Anything corresponding from
17 the plaintiffs that were used?

18 MR. WEINBERGER: No, Your Honor.

19 THE COURT: Okay.

20 MR. HALL: Your Honor, I just have one issue
21 with respect to --

22 THE COURT REPORTER: Who is speaking?

23 MR. HALL: Jeff Hall for Walgreens.

24 And I believe there's an agreement that
25 Miss Fitzpatrick is just going to show us the actual

1 documents, but it's P23116, which were charts and figures
2 used during the direct examination of Dr. Keyes.

3 And as we said on the record, we do not object to the
4 charts and figures on pages 56 through 60 of her report.
5 And as I understand, they were going to be excerpted just to
6 show the charts and figures that she described.

7 Same point for P23126, which was Dr. Young's --

8 THE COURT REPORTER: One second. It's the
9 same point for P --

10 MR. HALL: P23128 -- excuse me -- P23128, and
11 they are charts and graphs on pages 6, 27, 36, 41, and 46 of
12 her report.

13 And also P23129, which is just the CV, pages 1 through
14 9. We do not object.

15 And my understanding is that there's agreement on all
16 of these, we just haven't seen the final excerpted versions.
17 Subject to that, I think we're all set.

18 MS. FITZPATRICK: Yes, Your Honor. Mr. Hall's
19 correct. We will be providing those excerpted PDFs which
20 will reflect exactly what Mr. Hall put into the record.

21 THE COURT: All right. I thought I would
22 discuss a little bit about the post-hearing briefs, what
23 would be useful to me.

24 You know, I really at this point have no idea, not
25 sure what either side is urging me to do. I mean, I can

1 start with the defendants.

2 I had ordered the defendants to produce their
3 abatement plan, their plan which they thought over -- you
4 know, they're objecting that there should even be one
5 because they think they should have won the first phase of
6 the trial or get a new trial, or whatever, but assuming the
7 verdict stands, what they think a fair abatement plan would
8 be, and I never got one. So there are obviously
9 consequences to that.

10 Candidly, the testimony of the last two experts, I
11 mean, these were the -- the opinions of these experts. I
12 have no idea if -- I assume that counsel is subscribing --
13 the parties are subscribing to them or they wouldn't have
14 put these witnesses on. But Dr. Kessler's conclusion that
15 in his expert opinion these three defendants together should
16 bear 1.3 percent of the abatement cost, I have to
17 categorically reject out of hand.

18 And you know that. And you know why. Because the
19 jury found that these three defendants, their conduct had a
20 substantial effect, you know -- substantial cause of the
21 opioid epidemic in these two counties. And guess what, I
22 didn't define substantial in mathematical terms, but
23 everyone knows it's a heck of a lot more than 1.3 percent.
24 If the jury thought that what these three pharmacies did
25 caused only 1 percent of whatever happened, the verdict

1 would have been different. They would have had to find the
2 defendants not liable, and you know that.

3 So I don't know -- so I've got to reject -- if that's
4 the defendants' position, it's categorically rejected, it's
5 inconsistent with the verdict. I don't need a brief. No
6 brief you can file can change that, and you know that. It's
7 categorically rejected.

8 Dr. Chandra had a little bit more, but even his bottom
9 line, again, not a substantial -- not a substantial cause.
10 So I've got to categorically reject that. I don't know what
11 you're suggesting to me. So I'm not getting anything from
12 the defendants.

13 Again, on the plaintiffs' side, I don't know really
14 what the plaintiffs' position is. I mean, if you're -- you
15 know, I listened to the experts, I had read the reports
16 beforehand, I knew what they were going to say. They said
17 what I expected them to say.

18 I don't know if the plaintiffs' position is that these
19 three defendants should bear 100 percent of the abatement
20 cost. I mean, again, the experts, you know, they gave me
21 their charts, their figures. I don't know what your
22 positions are.

23 But the point is if I'm just going to get briefs from
24 the plaintiffs urging me to, you know, assess \$3 billion
25 over 15 years and I get briefs from the defendants urging,

1 you know, 1 percent of some diminished amount, I don't need
2 them. You can really save your clients the time and the
3 money. I don't need them. I won't pay any attention to
4 them.

5 I will do the best I can. No judge in history has
6 ever had to do this, so I have no model. I'll do it. And
7 then it will go up to the Court of Appeals, and they can
8 take a look at it along with everything else from the trial.

9 If either side has something that will help me, I'm
10 happy to receive it. I welcome some help. It's a difficult
11 position for a judge to do something completely uncharted.
12 No one's ever done this.

13 So if either side wants to give me something that will
14 help me, I'm happy to receive it. But if it's -- I don't
15 need -- I don't need briefs summarizing what the experts
16 said, okay? I mean, quite frankly, you know, there wasn't a
17 great deal new out of the hearing, and I didn't expect there
18 to be much. I didn't expect these experts to retract their
19 reports, for gosh sakes. No one did.

20 So it's really up to you. We've got the dates, I
21 think it's the June 6th simultaneous briefs and then the
22 June 13th simultaneous replies. If you want to file
23 something that's helpful to me, I'm happy to receive it. If
24 you don't, you don't have to. I'll do what I need to do
25 myself. I was prepared for this hearing. I took good

1 notes. I've got a good team, and I will produce something.

2 So I'll pretty much leave it to you. I'm obviously
3 not going to issue anything till at least June 6th and see
4 what gets submitted. And if something gets submitted, I
5 won't issue anything until June 13th. If someone submits
6 something, the other side certainly has a chance to respond.

7 So that's my best thought. But what I'm really
8 looking for -- and I'm really looking for something --
9 something real, something that each side would think that a
10 moderately-intelligent judge who's been paying attention for
11 four-and-a-half years might actually order. And if you want
12 to produce that to me in your suggestions, then I'm more
13 than happy to receive it, but I don't need advocacy or what
14 these experts said.

15 And also I think the parties had said some time ago
16 that you were working together to try to come up with some
17 sort of agreed-upon injunction provisions that would ensure
18 that each defendant, one has in place an adequate policy,
19 trains their pharmacists in it, gives the pharmacists the
20 tools to effectuate it, and then has some sort of monitoring
21 system in place along with other things to make sure their
22 pharmacists are doing what they're supposed to be doing.

23 And I'm hoping that the parties are working on that.
24 Are you working together on that, I hope?

25 MR. LANIER: Your Honor, at this point we --

1 THE COURT: It's probably better for the court
2 reporter for you to stay seated.

3 MR. LANIER: Sorry, Judge. It's just my
4 respect thing kicks in.

5 Judge, the parties have been so wound up in presenting
6 this trial to you, this phase of the trial to you, that we
7 haven't had a chance yet to proceed past just general dialog
8 on this issue, but I will commit to you on behalf of the
9 plaintiffs that we will diligently press that forward as the
10 next issue to be dealt with as we try to process this.

11 THE COURT: All right. Thank you, Mr. Lanier.

12 It wouldn't surprise me if there are a number of
13 things already in place at some or all of the defendants,
14 based on, you know, what's happened over the past few years
15 and these trials.

16 So, again, I'm not looking to, you know, certainly
17 micromanage the pharmacy business. I just want to make sure
18 that there are things in place to make sure that each
19 pharmacist does what he or she is supposed to do in
20 exercising his or her corresponding responsibility under the
21 CSA. That's it.

22 MR. DELINSKY: Your Honor, may I just be heard
23 for a moment?

24 THE COURT: Sure.

25 MR. DELINSKY: Your Honor, we agreed to the

1 briefing -- well, actually, I want to start in a different
2 place. And this part of it, Your Honor, I'm speaking only
3 for CVS. We obviously have it -- I don't want to speak for
4 any other defendants with whom we haven't had the
5 opportunity to confer on, Your Honor.

6 We do plan, Your Honor, with providing you with a
7 path, okay? I am not going to promise you that you're going
8 to like our path. You may not, and I think it's a fair bet
9 the plaintiffs won't, but we think it will be a rational
10 path.

11 We think that the challenge before Your Honor is on
12 the assumption that Your Honor overrules our objections that
13 abatement can't proceed past an injunctive form of relief
14 along the lines of what we talked about, like drug take-back
15 to reduce the oversupply on the assumption that the Court
16 will move to relief in some of these effects of the
17 oversupply.

18 We recognize that the task before Your Honor is
19 difficult. It's difficult in many respects. One of the
20 areas it's difficult in -- it's something that I think we've
21 all learned in sitting in this courtroom is that the data on
22 OUD just isn't very good. And it's no expert's fault, it's
23 just not very good. So there's challenges here insofar as
24 Your Honor is going to grant relief along those lines.

25 We intended to propose a path. And, again, I'm not

1 promising anyone's going to like it. My guess is people may
2 not like it, but we are going to endeavor to propose
3 something to you that we believe is workable, and we've put
4 it in writing, there's been comments on it throughout trial.
5 But we will try, Your Honor. Again, that's only speaking
6 for CVS.

7 THE COURT: Well, thank you, Mr. Delinsky.

8 And I should -- I think I've already made it clear
9 that, I mean, whatever amount of money I order to be paid
10 for specific purposes, I'm going to have the money paid
11 annually, and I'm going to require the County to say in
12 advance -- to certify that we're only going to spend this
13 money on these purposes, and then to provide an accounting
14 of roughly 90 days at the end of the year to say what
15 they've done.

16 And if it turns out that they didn't need it all, then
17 it either gets returned or applied to the next year, and
18 then we'd adjust the next year. I mean, these experts, no
19 one knows for sure what's going to happen even the first
20 year, okay? I mean, how many people, you know, will get
21 treatment. Whether we, you know, go from 40 percent to
22 60 percent, as one of the experts said. I mean, it might,
23 it might not.

24 But, again, no one's going to just hand money out and
25 it just gets used for other purposes. So I'll calibrate it,

1 and I'll probably, you know, have another -- another sort of
2 an assessment hearing proceeding in some period of time to
3 see how it's working and whether the amount of money was
4 adequate, whether it's accomplishing anything.

5 I mean, only a fool would just say, "I know what's
6 going to happen in the next 15 years, and here it is, and
7 I'm not looking at it again." This is very complicated.

8 So I wouldn't get -- no one should get really hung up
9 on what's the most accurate estimate of the number of people
10 who need treatment because I'm going to come up with
11 something, and if the number is too high, it will be
12 adjusted down. And if it's too low, it will be adjusted up
13 and calibrated. So don't get hung up on that.

14 Whatever I do is a starting point, and it will -- I'm
15 sure it will be some adjustment.

16 So the key really is, all right, what are the
17 components of the plan? What services, programs can clearly
18 be shown to be needed to abate the opioid epidemic that the
19 jury found, okay? And it may not be any -- everything, but
20 directed to that.

21 Everyone knows there was an opioid problem before
22 there was an oversupply and diversion of prescription
23 opioids. And, guess what, there will be an opioid problem
24 when this scourge is ultimately abated, reduced. There will
25 be drug cartels that are going to sell heroin and who knows

1 what else into Lake, Trumbull County, and everywhere.

2 So I've got to figure that out, and then I've got to
3 figure out, all right, what is fair and equitable to assess
4 upon these three defendants, given everything that everyone
5 else knows, okay? And I'm sitting in a court of equity, and
6 I will come up with something.

7 But I am suggesting that both sides, if they want to
8 be helpful, give me something that if they were me, if you
9 were me, you might seriously consider doing. All right?
10 That's what I'm looking for. All right? If you were a
11 judge and you had to do this and you had to decide it, is
12 this something you would seriously consider? Okay? And
13 it's not, you know, maybe where the plaintiffs are and it's
14 certainly not the 1 percent. So, again, if you want to be
15 helpful, that would be helpful.

16 You know, obviously you can, you know, write anything
17 you want. But I thought I would make that clear. I've
18 obviously been giving it a lot of thought, so I thought
19 generally lawyers like to know what a judge is thinking.

20 MR. DELINSKY: Your Honor, may I just make one
21 additional point? And thank you very much for your insight
22 into your thinking and how we can be helpful. It is
23 appreciated, Your Honor.

24 I just wanted to flag one other issue, which is the
25 following. I know I'm speaking for the defense on this, I

1 suspect I may also be making a point of the plaintiffs'
2 mind, but I'll leave it to them. And that is that there
3 were points in the trial where we collected testimony based
4 on each of our own work, and it may not be apparent to Your
5 Honor why we did it or what it means, how it fits into the
6 puzzle.

7 So that is one thing, because we didn't have closing
8 arguments and we intended a post-trial briefing to be the
9 opportunity for us to tie it together, we do think it's
10 important -- and we ask and we know Your Honor will keep an
11 open mind in your evaluation of the evidence -- that we have
12 that opportunity to say, you know, Dr. Alexander said this
13 and this is why it's significant in our view of the world.
14 It may not be something that dawns on you immediately, but
15 that is one very important function we see in the post-trial
16 briefing, and we just want to make sure we have that
17 opportunity.

18 THE COURT: You can have that -- again, it's
19 only going to matter to me if it's -- if it's connected to
20 your advocating a position that makes sense, that's
21 realistic, that's fair, and it's something that you think if
22 you were a judge you would conceivably do. Otherwise, I
23 mean, it's -- you know, it may be accurate, but it
24 doesn't -- doesn't get you anywhere, doesn't get me
25 anywhere.

1 MR. DELINSKY: Understood, Your Honor. It
2 can't be in the ether. It has to be, you know, grounded
3 and --

4 THE COURT: That's the idea, right.

5 MR. DELINSKY: Understood, Your Honor.

6 THE COURT: All right. Well, again, I
7 appreciate that the parties were very efficient in what they
8 did, streamlined it, realized you probably didn't need
9 everything that you planned and we didn't need all the days,
10 and that's fine. Everyone's busy.

11 So stay safe. And the matter is submitted, and I will
12 work on it diligently with my team.

13 Mr. Loge has reminded me that we didn't set page
14 limits.

15 MR. LANIER: You thinking like 1500 a side?

16 THE COURT: No.

17 What do you think -- I mean, now knowing what I want
18 or at least what I would like, what I want, what are you
19 suggesting?

20 MR. DELINSKY: Your Honor, could we think
21 about that question?

22 THE COURT: All right. Really -- again, you
23 can write 500 pages. And if it's not helpful to me, trust
24 me, I'm not going to spend a lot of time on it. All right?
25 I'll try and -- however many pages there are, what I'm going

1 to zero right in on, is this something helpful to me. And
2 the danger is if it's 500 pages, I might miss it, the two
3 pages that are. So I wouldn't, you know -- probably my team
4 will find it, but -- so --

5 MR. DELINSKY: Just on the defense side --

6 THE COURT: Why don't you confer. Confer what
7 you want to do. And I mean, it's -- obviously it would be
8 the same on each side, so I don't really -- again, I'm --
9 the length to me really doesn't matter because if it's not
10 helpful, it's not helpful.

11 We have -- Special Master Cohen has reminded me that
12 there is injunctive relief in the Florida settlement. Is
13 that document public?

14 MR. WEINBERGER: Yes, it is, Your Honor.

15 THE COURT: That's public. I would start
16 there, okay? I haven't seen it.

17 Do we have a copy of --

18 MR. WEINBERGER: We actually attached it to
19 our brief. It was like a trial brief that -- I think it was
20 a --

21 THE COURT: Actually the trial brief. All
22 right.

23 MR. WEINBERGER: Your Honor, before we
24 adjourn, I'd like to make a couple of comments, if I may, on
25 behalf of the plaintiffs.

1 THE COURT: Okay.

2 MR. WEINBERGER: As the Court has pointed out,
3 this ends a phase of this litigation that has lasted
4 four-and-a-half years. And on behalf of Mr. Lanier and our
5 team and the plaintiffs, we want to thank the Court for your
6 diligence and your patience for setting clear parameters for
7 us and for allowing both sides to fully present the evidence
8 that we believe was important to the case.

9 We want to thank all the Court's staff. We want to
10 thank particularly Special Master Cohen.

11 Every time I come down to this courthouse and sit in
12 this courtroom, I am reminded of the importance of this
13 system of justice, and particularly the federal system,
14 which permits lawyers like us to try cases before a court
15 and jury in the most magnificent courtrooms in our country,
16 that this is just an example of.

17 And I am reminded of the fact that the reason why we,
18 the taxpayers, build courtrooms like this is because we all
19 as citizens and particularly we as trial lawyers understand
20 the importance of the judicial system. And I think we don't
21 think about that enough. We don't talk about it enough.
22 And particularly in a case like this, as we've come to this
23 courtroom many times over the last four-and-a-half years, at
24 least I personally have not fully appreciated the
25 significance of the federal judicial system and the federal

1 judges who, of course, are the most important cog in that
2 system.

3 So I just wanted to speak for us.

4 I also wanted to say that having tried cases all over
5 the state, both in the state and the federal courthouse,
6 I've had an opportunity to come up against great trial
7 lawyers and professionals, and there is no better group of
8 lawyers in my mind or professionals than defense counsel who
9 we faced in this case. And sure, we've had lots of
10 disagreements, but that's natural. And so I wanted to thank
11 our esteemed counsel on the other side.

12 And then finally, before Mr. Lanier grabs the
13 microphone, I want to give Mr. Boyd from Lake County an
14 opportunity to say a few words.

15 MR. BOYD: Thank you.

16 Your Honor, and the Court, and the team that's
17 representing Lake and Trumbull County --

18 THE COURT REPORTER: You'll need to keep your
19 voice up.

20 MR. BOYD: On behalf of the leadership of the
21 Board of the Lake County Commissioners, our 230,000
22 residents, I'm sure my colleagues in Trumbull County who
23 could not be here today --

24 THE COURT REPORTER: You'll need to speak
25 slower for the record.

1 MR. BOYD: That's why I'm an urban planner and
2 not an administrator.

3 THE COURT: You're doing fine, Mr. Boyd.

4 MR. BOYD: I want to express my sincere
5 appreciation and gratitude to Your Honor and the Court staff
6 for not only the past two weeks but the fall, the six or
7 seven weeks we were here in this wonderful facility. And I
8 look forward to the future steps ahead.

9 And, once again, thank you on behalf of the Lake
10 County Board of Commissioners and our 230,000 residents.
11 Thank you.

12 MR. LANIER: Your Honor, if I can have the
13 final word for the plaintiffs to say that not only do I echo
14 what has been said by everybody, but a special appreciation
15 for those of us, and I'm sure I'm speaking on behalf of at
16 least the CVS lawyers because we've talked about it outside
17 of court, but for those of us who are not in-staters who
18 have come in from outside this jurisdiction, and frankly the
19 first time I've ever practiced in front of you has been this
20 case, our deep gratitude and our deep respect and our
21 deepest honor for who you are and the way this court has
22 been conducted, the way this hearing has been conducted.

23 I have never in my life said this before, but I'm
24 about to say, if you ever need a criminal appointment for a
25 lawyer from Texas to come up here, I would volunteer in a

1 criminal case. I'd make Jeff -- or Eric come with me -- not
2 Jeff, I don't want him -- I'd make Eric come up with me, and
3 we would criminally defend someone who was pro se if we
4 could do it in this court with your people, because it's
5 been such an honor to be here.

6 And, frankly, I'm just a bit maudlin that you're not
7 going to be setting us for another trial.

8 MR. DELINSKY: Just a few things, Your Honor.

9 Number 1, I join in the offer, and I would love to do
10 that for -- on many counts.

11 But, Peter, as a third-generation lawyer, my
12 grandfather was a lawyer, my dad was and is a lawyer, your
13 words choked me up. And I really -- I can't meet them, but
14 thank you. Thank you for everything you said about
15 everything and Special Master Cohen.

16 Judge Polster, thank you for the hospitality you
17 showed us as out-of-towners. These have been difficult
18 proceedings, but we certainly appreciate the respect you've
19 given us, the latitude, and indulgence you've given me in
20 particular at times.

21 So thank you. And I'm sorry I can't say more, Pete,
22 but I can't do it better than you did.

23 THE COURT: All right.

24 MR. HALL: Your Honor, if I could just
25 briefly.

1 THE COURT: Sure.

2 MR. HALL: On behalf of Miss Hacker and
3 myself, I would just like to thank you and your entire team
4 for allowing us to join seamlessly and welcoming us here.
5 We've done a lot of work to get ready, and we've done our
6 best, but we really appreciate how you've conducted the
7 hearing and let us participate. So thank you.

8 MS. FUMERTON: And, Your Honor, I know
9 Mr. Majoras couldn't be here this morning, but I know what
10 I'm saying is on behalf of him as well.

11 Thank you for all your patience with us, and thank you
12 to Special Master Cohen for all his patience with us, and
13 especially me. So thank you.

14 THE COURT: Everyone's welcome.

15 And Peter, I appreciate your saying that. And, you
16 know, we don't -- we don't talk about it as much as we
17 should, you know.

18 I said at the beginning, I didn't think the opioid
19 epidemic was properly, you know -- should be handled with by
20 our branch of the government, that it was the responsibility
21 primarily of the other two branches, but it's here and I
22 would do my best.

23 I've probably done some things well, some things maybe
24 not so well. I said at the beginning I've had the best
25 lawyers in the country. I've said that many times. That's

1 absolutely the case. But we're all lucky we live in a
2 country where we can do what we've done. Probably very few
3 places in the world where we could have done what we did,
4 maybe a handful.

5 I don't know if -- I mean -- and it's a tribute. You
6 know, we've got some pretty good judges, we've got some
7 very, very good lawyers who know what they're doing and know
8 how to do it, and it's -- I think the reason we have a, you
9 know, the federal courthouse, some of the majesties, I think
10 it has an impact on all of us to remind of us what we've
11 got. I sure as hell hope we don't lose it.

12 I mean, anyone who's thinking has got to be pretty
13 darn worried, because if the other two branches of
14 government aren't working well, you can have the best judges
15 in the world, we can't hold things together on our own.
16 Everyone knows that. We can do the best we can.

17 So, again, I appreciate everyone's hard work, you
18 know, in advocating hard for your clients and doing a very
19 professional job. You know, when we've had to try cases,
20 we've tried them. When we worked out settlements, we worked
21 out settlements. We do both at the same time.

22 But I think, Mr. Weinberger, I appreciate your saying
23 that because it's -- those of us in the Judicial Branch and
24 the legal branch, candidly we need to talk about it more
25 because most people in the country don't know what happens

1 in court, what they know is probably not accurate.
2 Sometimes -- I mean, we don't have big press offices, we
3 don't hold press conferences, issue releases, hold press
4 conferences where people could ask us questions.

5 So the public really doesn't know what we do and how
6 we do it, and they may have distorted ideas. So I think it
7 behooves all of us to do what we can to talk about it in our
8 communities and say, look, this is what we've got, it's real
9 important, hearings aren't fake. Every judge you have,
10 state or federal, is going to hold a transparent hearing and
11 anyone can watch it. If there's witnesses, if there's
12 documents, both sides can bring it in and have a hearing,
13 and the judge is going to issue a written opinion that
14 everyone can see. And if there's evidence, there's
15 evidence. And if there's not, there's not. And that's why
16 we have courts. But we need to talk about it so that people
17 understand it or else we'll lose it.

18 Okay. Thank you. Stay safe. And I look forward to
19 reading your submissions.

20 (Proceedings concluded at 9:55 a.m.)

21

22 **C E R T I F I C A T E**

23 I certify that the foregoing is a correct transcript
24 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

25

<u>/s/ Gregory S. Mizanin</u>	<u>May 18, 2022</u>
GREGORY S. MIZANIN, RDR, CRR	DATE